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Amendment in Response to Office Action of 02/12/2004

REMARKS

The Examiner's Office Action of 02/12/2004 has been reviewed. In response thereto, various amendments have been made to simplify the issues in the instant application and to define applicant's invention in terms which more clearly define over the prior art.

The Examiner has rejected Claims 2 and 5 - 13 "under 35 U.S.C. 103(a) as being unpatentable over Allen (U.S. Patent No. 5,507,794) in view of Douglas (U.S. Patent No. Des. 405,187)." The Examiner has also rejected Claims 1, 3 and 4 "under 35 U.S.C. 103(a) as being unpatentable over Allen (U.S. Patent No. 5,507,794) in view of Douglas (U.S. patent No. Des. 405, 187) in view of Thomas et al. (U.S. Patent No. 5,215,080)." These rejections are traversed. No objection is made to the Examiner's characterization as to what these prior art references teach. Objection is made with regard to what would have been obvious in combining them. More importantly, a more careful review of applicant's claims as amended and the prior art reveals that various key claimed features are not found within the prior art taken alone or in combination.

More specifically, applicant's invention is in an ice patch which may, or may not, be used alone and which may, or may not, be used in combination with the jacket, the jacket being of the

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type with decorative indicia not found anywhere in the prior art and wherein the ice patch may be used as a pair in combination with a carrying case of the type with a tie which provides security as well as a decorative aspect not found in the prior art. Further, the carrying case with tie strap features "a line of stitching parallel with the side edges to form two pockets", a relationship not found anywhere in the prior art. Further, although the Examiner's primary reference to Allen discloses a combination of an ice pack and a jacket, it does not teach the possibility of decorative indicia on the jacket. Further, when combining Allen with Douglas, note is taken that Douglas teaches the indicia on the ice pack but not on a jacket. Further, the indicia of Douglas appears to be printed material and not the separate aspects like "oval felt ears" and "a found felt nose" in combination with "eyes of liquid paint", etc. Some aspects of applicant's invention are found in the various pieces of prior art, there is no teaching of the overall combination or system of patch, jacket, indicia on the jacket, carrying case, etc. as set forth in applicant's claims as now amended. In addition, Claim 2 has been amended to bring out the functional relationship of the ice patch being configured to be retained on the eye of a user by gravity in a manner as suggested by the Examiner.

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It would appear that the Examiner has merely gleaned miscellaneous features in the prior art and has attempted to combine them without a teaching for their combination. The only teaching is in applicant's disclosure which, by definition, is not prior art. But even if there were a teaching for the combination, the resulting structure would still fail to anticipate applicant's invention for the reasons set forth herein above.

It is deemed that the amendments herein overcome all grounds of objection and rejection. Reconsideration and a Notice of Allowance are requested.